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T002-2019-000007

HB Doc No. 7935743

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA, *ex rel.* MARK
BRNOVICH,

Plaintiff,

v.

FABIAN CASTRO-LOPEZ, and
JANE DOE CASTRO-LOPEZ,
Individually and as part of or on behalf of any
Marital, Business, Corporate, Trust, or other
Community,

ET AL.,

Defendants *In Personam*,

AND

THE PROPERTY LISTED AND
DESCRIBED IN APPENDIX ONE
TO STATE'S NOPF and COMPLAINT,

Defendants *In Rem*
and *In Personam*.

CCSO/DEA Case No. 19-00799

No. C-20191151

STATE'S RESPONSE TO
MOTION FOR SETTLEMENT
HEARING BY CLAIMANT
SHALMARIE TULK

(Assigned to Hon. Richard E. Gordon,
Division 8)

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2 The State of Arizona opposes the setting of a settlement hearing at this time. There
3 is no authority for a settlement hearing and any settlement conference is premature.

4 The property at issue in this case was seized for forfeiture pursuant to Seizure
5 Warrant Number 19SW300 issued on 01/07/2019 and executed on 01/09/2019. The State
6 initiated this action by filing its *Notice of Seizure for Forfeiture, Notice of Pending*
7 *Forfeiture In Rem, and Notice of Impending Forfeiture In Personam* [NOPF] on
8 03/07/2019.
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11 In response to the NOPF Shalmarie Tulk filed a claim to two vehicles: a 2005
12 Dodge 1-Ton Pickup (Item 4.49 in the Seizure Warrant; Item 53 in Appendix One to the
13 NOPF) and a 2010 BMW (Item 4.50 in the Seizure Warrant; Item 54 in Appendix One to
14 the NOPF).
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16 The State then filed its *Complaint In Rem and In Personam* [Complaint] on
17 05/06/2019. The State provided a Waiver of Service and Summons along with its
18 Complaint to all named *in personam* Defendants and any *in rem* claimants, giving any
19 person who executes and returns the Waiver until 07/12/2019 to file an Answer to the
20 Complaint.
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22 Claimant Shalmarie Tulk filed a Motion for Settlement Hearing on 05/17/2019.
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24 Shalmarie Tulk executed and returned a Waiver on 05/20/2019.

25 To date Shalmarie Tulk has not filed an Answer to the Complaint.
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2 No disclosure or discovery has yet been undertaken in this action. Rule 26.1 initial
3 disclosure is due forty days after the filing of Answers. The hearing on claims is to be set,
4 as practicable, sixty days after all parties have complied with Rule 26.1 disclosure. A.R.S.
5 § 13-4311(K). Pursuant to A.R.S. § 13-4311(H) discovery is permitted as of the time of
6 the filing of the parties' pleadings and pursuant to the Rules of Civil Procedure.
7

8 Shalmarie Tulk's motion provides no authority for a settlement hearing, and the
9 State has found no authority regarding the existence or operation of a "settlement
10 hearing." A.R.Civ.P., Rule 16.1 permits a party to request a settlement conference. Upon
11 the setting of a settlement conference Rule 16.1 then requires additional actions by the
12 parties in the case. The parties are required to prepare and submit a settlement conference
13 Memorandum containing a description of all claims, defenses, issues and their positions
14 thereon; a description of the evidence they anticipate they will present at trial; a summary
15 of any settlement negotiations to date; an assessment of the likely outcome of a trial; and
16 any other relevant information. All parties are required to attend unless excused by the
17 Court. *See* Rule 16.1, subsections (b)(1), (b)(2)(A-E), and (c). The initial pleadings,
18 disclosure and discovery are where the subject matter requirements for a settlement
19 conference are set forth and developed. Those have yet to occur.
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24 Because the pleadings stage is not complete and because the disclosure and
25 discovery stages have not been triggered it is premature to have a settlement conference,
26 let alone some type of settlement hearing.
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For these reasons the State opposes the Motion and asks the Court to deny the Motion.

RESPECTFULLY SUBMITTED this 30th day of May, 2019.

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/s/ Thomas J. Rankin
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Original e-filed with Clerk of Court
and distributed via TurboCourt to
assigned Judge and all parties:

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